

Editor's note: Appealed -- remanded, (for further hearing) Civ. No. S77-348 (E.D.Cal. April 4, 1978)

UNITED STATES
v.
CHESTER L. RAMSEY

IBLA 76-740

Decided March 25, 1977

Appeal from decision of Administrative Law Judge R. M. Steiner declaring a mining claim null and void for lack of discovery in Contest CA 2713.

Affirmed.

1. Mining Claims: Contests--Mining Claims: Determination of Validity--
Rules of Practice

A mining claim is properly declared null and void where the government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance of the evidence that a discovery has been made.

APPEARANCES: Chester L. Ramsey, Oroville, California, pro se; Charles F. Lawrence, Esq., Office of the General Counsel, United States Department of Agriculture, San Francisco, California, for the United States.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Chester L. Ramsey has appealed from a decision by Administrative Law Judge R. M. Steiner, dated June 21, 1976, which declared the Stag Point placer mining claim, and the Stag Point placer mining claim, as amended, 1/ null and void for lack of discovery of a valuable mineral deposit. The claim is situated in Secs. 3 and 4, T. 22 N., R. 8 E., M.D.M., Plumas County, California.

1/ The Stag Point placer claim, located on August 9, 1958, and the Stag Point Placer Claim (amended) located on April 16, 1965, are the same claim.

On July 3, 1975, the Bureau of Land Management initiated contest proceedings by filing a complaint charging that:

a) There are not presently disclosed within the boundaries of the mining claim minerals of a variety subject to the mining laws, sufficient in quantity, quality, and value to constitute a discovery.

b) The land embraced within the claim is nonmineral in character.

A hearing was held on April 13, 1976, at Sacramento, California. Henry W. Jones, mineral examiner for the United States Forest Service testified on behalf of the government and Chester L. Ramsey appeared pro se.

The following evidence was adduced at the hearing. Mr. Jones testified that he examined the claim on November 13 and 15, 1970, July 24, 1973, July 25, 1974, and November 13, 1975. He indicated that on July 25, 1974, Mr. Ramsey pointed out a site under a large boulder which he (Ramsey) had worked 3 years previously and an area under a waterfall where Ramsey's son had panned a half-ounce nugget (Tr. 12, 26). The examiner received no other information from Mr. Ramsey. He went on to take six samples from various sites on the claim. Sample No. 1 was taken on the "upper prospect hole" near a cabin on the claim. He obtained no gold or black sand from this sample and assigned it no value. Sample No. 2 was a five-pan sample taken from the face of an old hydraulic placer cut that had been excavated some 30 years ago and was heavily overgrown. The examiner observed "three very fine colors in the five pans." He estimated the value at 3 to 5 cents per yard (Tr. 15). Sample No. 3, taken at the confluence of two streams, contained three very fine colors valued at about 5 cents per cubic yard. Sample No. 4, a five-pan sample taken from a bulldozer cut revealed one fine flake of gold, too small to weigh, and the examiner assigned no apparent value to it. Sample No. 5 was taken below the waterfall in the general vicinity where the half-ounce nugget had allegedly been found. It contained only black sand and revealed no color. The sixth sample, a five-pan series, yielded one very fine piece of gold too small to weigh (Tr. 16). The examiner observed no shovels, sluices, or other equipment indicative of current workings (Tr. 17). It was his opinion that a prudent man could not expend time, effort, or money with the expectation of finding gold on the claim (Tr. 22).

Mr. Ramsey, who had held the claim for 25 years felt that it could yield sufficient gold to support him when he retired. He testified that in 25 years he had taken out approximately 3 ounces of gold mostly from crevices in the "camp hole." He conceded that he had not worked the claim and was just holding it (Tr. 29). On

a yearly basis he had done assessment work on the water system and the cabin but had done no mining. He had made no determination as to how many yards of gravel might be on the claim or what its gold content might be (Tr. 30).

The Judge found from this evidence that there was no discovery of a valuable mineral deposit on the claim and that the lands embraced thereby were nonmineral in character. Consequently, he declared the claim null and void.

On appeal to this Board appellant alleges that the mining examiner's sampling was cursory and defective in that only two-pan samples were taken at the most promising sites whereas five-pan samples were taken at the poorer sites. Appellant asserts further that the examiner failed entirely to sample his current workings, that the claim contained more gold than the 3 ounces taken out in 25 years, and that his method of obtaining the gold is scuba diving. Appellant requests a new hearing for the purpose of presenting further evidence.

[1] As this Board has frequently held, when the government contests a mining claim it has the burden of making a prima facie case that the claim is invalid. United States v. Arizona Mining and Refining Company, Inc., 27 IBLA 99 (1976); United States v. Richard C. Reynders, 26 IBLA 131 (1976); United States v. Gold Placers, Inc., 25 IBLA 368 (1976). A prima facie case is established where a government mineral examiner gives his expert opinion that he examined the claim and found insufficient values to support the assertion that a valuable mineral deposit has been discovered. Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959); United States v. Reynders, *supra*; United States v. Ramsey, 14 IBLA 152 (1974). Once the government has established a prima facie case, the burden shifts to the contestee to show by a preponderance of the evidence that a valuable mineral deposit was discovered on the claim. United States v. Zweifel, 508 F.2d 1150 (10th Cir. 1975); United States v. Springer, 491 F.2d 239 (9th Cir.), *cert. denied*, 419 U.S. 234 (1974).

Appellant has pointed to no evidence which would cast doubt upon the sampling procedures and conclusions of the mineral examiner. Appellant's assertion that the sampling procedures were defective is unsupported by the record which contains no data tending to indicate that certain sites would be more promising than others. Appellant's statement that the examiner failed to sample his current workings is similarly without merit as it is in conflict with the examiner's testimony indicating that no current workings existed and with appellant's own admissions that he had not been working the claim. Appellant has not shown that a valuable mineral deposit was discovered on the claim.

Having reviewed the Judge's summation of the evidence and conclusions of law and the entire record in light of the appeal, we conclude that appellant has demonstrated no reason to disturb the Judge's decision, and that a further hearing on the matter would serve no useful purpose. The request for such hearing is therefore denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis

Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

